

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

AMERICAN CANOE ASSOCIATION, et al.,)

Plaintiffs,)

vs.)

No. 98-1195-CV-W-SOW-ECF

THE UNITED STATE ENVIRONMENTAL)
PROTECTION AGENCY, et al.,)

Defendants.)

ORDER

Before the Court is defendant the Environmental Protection Agency's Motion to Enter Consent Decree. Upon consideration of the motion, it is hereby

ORDERED that the Motion (Doc. #97) is granted and the Consent Decree, attached as an exhibit to defendant's motion, is entered as an Order of this Court.

s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 2-27-01

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

AMERICAN CANOE ASSOCIATION, et
al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

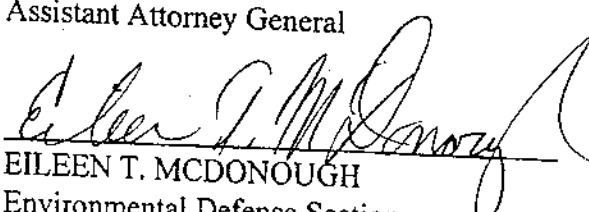
No. 98-1195-CV-W-SOW-ECF
Cons. with 98-4282-CV-W-SOW-ECF

EPA'S MOTION TO ENTER CONSENT DECREE

Pursuant to the Court's Scheduling Order of August 4, 2000, the United States Environmental Protection Agency ("EPA") today files a Consent Decree executed by counsel for EPA and counsel for American Canoe Association and Sierra Club, plaintiffs in Case No. 98-1195. EPA requests the Court to enter this Consent Decree as an Order of the Court.

Respectfully submitted,

LOIS J. SCHIFFER
Assistant Attorney General


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Environmental Defense Section
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MARTHA STEINCAMP
U.S. Environmental Protection Agency
Region VII
Office of Regional Counsel
726 Minnesota Avenue
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August 21, 2000

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

AMERICAN CANOE ASSOCIATION, et
al.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants.

Civil Action

98-1195-CV-W

and consolidated case 98-482-CV-C-5

ORDER

Upon consideration of EPA's Motion to Enter the Consent Decree, it is hereby ordered
that the motion is granted.

Executed on _____, 2000.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

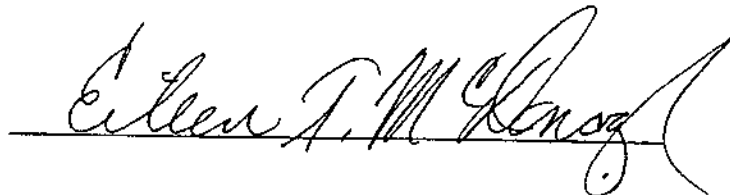
I hereby certify that a copy of EPA's Motion to Enter Consent Decree and the Consent Decree was served by Notice of Electronic Filing on August 21, 2000, upon:

David Bookbinder
American Canoe Association
7432 Alban Station Blvd.
Suite B-232
Springfield, Virginia 22150

George Van Cleve
Van Cleve & Associates
1215 17th Street, N.W.
Washington, D.C. 20036

John M. Simpson
4937 Wyoming Street
Kansas City, Missouri 64112

William F. Ford
Lathrop & Gage L.C.
2345 Grand Boulevard
Kansas City, MO 64108-2684

A handwritten signature in cursive script, reading "Ellen T. M. Rios", is written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

AMERICAN CANOE ASSOCIATION
et al.

Plaintiffs,

v.

CAROL M. BROWNER
Administrator, United States
Environmental Protection
Agency; and the UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

CIVIL ACTION FILE NO.
98-1195-CV-W

and CONSOLIDATED
CASE NO. 98-482-CV-W

CONSENT DECREE

WHEREAS, this case involves claims by the American Canoe Association, Inc. and the Sierra Club under the Clean Water Act, 33 U.S.C. § 1251, et seq. ("Act" or "CWA"), and the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"), to compel the United States Environmental Protection Agency, Carol M. Browner, Administrator, and Dennis Grams, Regional Administrator, EPA Region VII, (collectively "EPA") to identify waters for listing pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), and to establish Total Maximum Daily Loads ("TMDLs") for those waters;

WHEREAS, Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7 (b), (c), (d), and (e), provide for (1) identification of waters for

which applicable technology-based and other required controls are not stringent enough to implement water quality standards (the "Section 303(d) List"); (2) establishment of a priority ranking for such waters; and (3) establishment of TMDLs for pollutants for which those waters are not in attainment with water quality standards;

WHEREAS, in the complaints filed in this action, Plaintiffs allege inter alia, that:

- a. EPA's failure to approve or disapprove Missouri's 1998 Section 303(d) List in a timely fashion and/or its approval of an inadequate Section 303(d) List, and its failure to identify and prioritize water quality-limited segments ("WQLSs") in Missouri, constitute failures to perform nondiscretionary duties under Section 303(d) of the CWA, 33 U.S.C. § 1313(d).
- b. EPA's failure to establish and implement TMDLs constitutes a failure to perform nondiscretionary duties under Section 303(d) of the CWA, 33 U.S.C. § 1313(d).
- c. EPA's failure to propound a schedule for timely establishment of TMDLs by Missouri for all WQLSs constitutes a failure to perform the agency's nondiscretionary duty under Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and 40 C.F.R. § 130.7(d).
- d. EPA's failures with respect to review, approval or disapproval of the State's continuing planning process ("CPP"), and its failure to revoke Missouri's Title IV permit-issuing authority, constitute failures to perform the agency's nondiscretionary duties under Section 303(e) of the CWA, 33 U.S.C. § 1313(e).
- e. EPA's failures regarding a-d above constitute agency actions unreasonably withheld or unreasonably delayed, and/or agency actions that are arbitrary and capricious, an abuse of

discretion, or otherwise not in accordance with law, in violation of the APA, 5 U.S.C. §§ 706(1) and (2);

WHEREAS, the APA provides for judicial review of agency action made reviewable by statute or final agency action for which there is no other adequate remedy in court to determine whether such action is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unlawfully withheld or unreasonably delayed, 5 U.S.C. §§ 704, 706;

WHEREAS, the State of Missouri has lead responsibility for the identification and prioritization of waters still requiring TMDLs and for establishment of TMDLs pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d);

WHEREAS, EPA recognizes the importance of the Missouri and Mississippi Rivers and intends to work with the State of Missouri to complete any necessary TMDLs in a timely manner for these rivers;

WHEREAS, in order to resolve this lawsuit, Plaintiffs and EPA also have entered into a Settlement Agreement and EPA has issued a letter setting forth certain commitments with respect to review of some National Pollutant Discharge Elimination System permits in Missouri that have been filed separately with the Court for informational purposes only, the terms of which are not incorporated into this Consent Decree and are not enforceable orders of this Court;

WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action without any admission of fact or law, which they consider to be just, fair, adequate and equitable resolution of the claims raised in this action;

WHEREAS, by entering into this Consent Decree, Plaintiffs and EPA do not waive or limit any claim or defense, on any grounds, related to any final agency action taken pursuant to this Consent Decree, including EPA's approval, disapproval and/or establishment of Section 303(d) Lists and/or establishment of TMDLs in Missouri, or to any agency inaction;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation, including a trial; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, adequate and equitable resolution of the Claims raised in this action;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed as follows:

I. PARTIES

1. The parties to this Consent Decree are Plaintiffs and EPA. The parties understand that (a) Carol Browner and Dennis Grams were sued in their official capacities as Administrator of the United States Environmental Protection Agency and Regional Administrator of United States EPA, Region VII, respectively and (b) the obligations arising under this Consent Decree are to be performed by EPA and not by Carol Browner or Dennis Grams in their individual capacities.

II. PARTIES BOUND

2. This Consent Decree applies to, is binding upon, and inures to the benefit of Plaintiffs (and their successors, assigns, and designees) and EPA.

III. JURISDICTION

3. The Court retains jurisdiction for the purposes of resolving any disputes arising under the Consent Decree, and issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, or enforce the terms of this Consent Decree, and for granting any further relief as the interests of justice may require.

IV. DEFINITIONS

4. Whenever terms listed below are used in this Consent Decree, the following terms have the meanings provided below. All references in this Consent Decree to sections of the United States Code ("U.S.C.") or the Code of Federal Regulations ("C.F.R.") are to those sections in effect as of the date of entry of this Consent Decree or to any amendments to those sections when those amendments become effective.

- a. "Consent Decree" means this decree.
- b. "Day" means a calendar day unless expressly stated to be a working day. In determining any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" means the date upon which this Consent Decree is entered by the Court.
- d. "EPA" means the United States Environmental Protection Agency; Carol M. Browner, Administrator; and Dennis Grams, Regional Administrator, EPA Region VII.

e. "Establish" for purposes of this Consent Decree means (1) final agency action taken by EPA on a TMDL after proposal for public comment of that TMDL by EPA or (2) final agency action taken by the State of Missouri on a TMDL after proposal for public comment on that TMDL by the State.

f. "Execute" or "Execution" means that all parties have fully signed original counterparts to this Consent Decree and have caused such documents to be delivered to each party.

g. "Plaintiffs" means the American Canoe Association, Inc. and Sierra Club.

h. "Section 303(d) List" means the list required to be submitted by Section 303(d) (2) of the CWA, 33 U.S.C. § 1313(d)(2), and 40 C.F.R. § 130.7(b).

i. "Settlement Agreement" means the agreement between the parties executed concurrently with this Consent Decree.

j. "Total Maximum Daily Load" or "TMDL" has the meaning provided at CWA Section 303(d)(1)(C) and EPA's implementing regulations at 40 C.F.R. § 130.2(i). For purposes of this Consent Decree, the term "TMDL" includes a "total maximum daily thermal load" ("TMDTL"), and with respect to a TMDTL, the term "establishment" shall refer to "estimation" within the meaning of CWA Section 303(d)(1)(D).

k. The "United States" means the United States of America including its officers, agencies, departments and instrumentalities.

1. "Missouri" means the 24th State of the Union, admitted as a sovereign State of the United States forming a Constitution and a state government, including its officers, agencies, departments and instrumentalities.

V. TERMS OF AGREEMENT

5.A. SECTION 303(d) LIST

(1) In order to address Plaintiffs' concerns regarding the 1998 Section 303(d) List, EPA agrees to take the following steps:

(a) No later than April 15, 2001, EPA shall transmit the following to Missouri for consideration in developing the next Section 303(d) List: (1) the list of waters and pollutants identified in Attachment B to this Consent Decree for Missouri's consideration in developing the next Section 303(d) List and (2) the data and information EPA is able to obtain, using reasonable good faith efforts including requests to the States, which was used by Iowa, Nebraska, Kansas, Illinois, Kentucky, Tennessee, and Arkansas (hereinafter referred to collectively as "the boundary States"), to include the Mississippi and Missouri Rivers on their approved 1998 Section 303(d) Lists. EPA considers Attachment B and the data and information described in the preceding sentence to be existing and readily available water quality-related data and information for the next Section 303(d) List, but by entering into this Consent Decree EPA is not making any determination regarding whether any Attachment B waters and pollutants or those waterbody segments and pollutants of the Mississippi and Missouri Rivers listed as impaired on the approved 1998 Section 303(d) Lists of the boundary States (hereinafter the "boundary State

impairments") should be part of that list; rather, EPA is agreeing only that they must be considered by Missouri and EPA in making that determination.

(b) If, under the EPA regulations in effect as of January 1, 2002, Missouri is required to submit a Section 303(d) List in 2002, or if Missouri voluntarily submits a Section 303(d) List in 2002, EPA will take the following steps:

(i) In reviewing Missouri's Section 303(d) List submitted in 2002, EPA will determine whether the list includes the Attachment B waters and pollutants, and the boundary State impairments. If EPA finds that Missouri's Section 303(d) List submitted in 2002 does not include all Attachment B waters and pollutants and the boundary State impairments, then EPA shall either:

- (1) determine, in accordance with 40 C.F.R. Section 130.7(b), that such water(s) and pollutant(s) need to be listed, disapprove the omission of such water(s) and pollutant(s), and propose for public notice and comment an amendment that includes such water(s) and pollutant(s); or
- (2) determine, in accordance with 40 C.F.R. Section 130.7(b), that such water(s) and pollutant(s) need not be listed and approve the omission of such water(s) and pollutant(s).

(ii) EPA expects Missouri to provide a waterbody-specific rationale justifying the omission from the Missouri Section 303(d) List submitted in 2002 of any Attachment B water or any boundary State impairments. As part of EPA's decision, EPA shall provide a

waterbody-specific rationale justifying the omission of any such water or pollutant, and EPA shall provide a copy of the decision to the Plaintiffs.

(iii) Within sixty (60) days of either approving Missouri's Section 303(d) List submitted in 2002 or identifying waters to be added to Missouri's Section 303(d) List following public notice and comment, EPA shall (1) compile a list of all Attachment B waters and pollutants, if any, and all boundary State impairments, if any, that appear on the Missouri Section 303(d) List submitted in 2002, as approved and, if necessary, supplemented by EPA; and (2) file a motion to amend this Consent Decree to include that list (hereinafter "New Waters"), as additional waters requiring TMDLs to be established pursuant to paragraph 5.B.

(c) If, under the EPA regulations in effect as of January 1, 2002, Missouri is not required to submit a Section 303(d) List in 2002, and if Missouri does not voluntarily submit a Section 303(d) List in 2002, EPA will take the following steps:

(i) With respect to the Attachment B waters and pollutants and the boundary State impairments, by September 30, 2002, EPA shall either:

- (1) determine, in accordance with 40 C.F.R. Section 130.7(b), that such water(s) and pollutant(s) need to be listed, and propose for public notice and comment a list that includes such water(s) and pollutant(s); or
- (2) determine, in accordance with 40 C.F.R. Section 130.7(b), that such water(s) and pollutant(s) need not be listed.

(ii) EPA shall provide a waterbody-specific rationale justifying the omission of any Attachment B water or pollutant or any boundary State impairment and EPA shall provide a copy of the decision to the Plaintiffs.

(iii) Within sixty (60) days of EPA's determination pursuant to paragraph 5.A(1)(c)(ii), EPA shall: (1) compile a list of all Attachment B waters and pollutants, if any, and all boundary State impairments, if any, that appear on the Section 303(d) List; and (2) file a motion to amend this Consent Decree to include that list (hereinafter "EPA New Waters"), as additional waters requiring TMDLs to be established pursuant to paragraph 5.B.

(2) Any TMDLs for New Waters or EPA New Waters on the Missouri Section 303(d) List pursuant to paragraph (1) above shall be established by 2009, subject to paragraphs 5.B(2) and 5.B(4).

5.B. ESTABLISHMENT OF TMDLs

(1) For all waters described below, EPA expects Missouri to establish TMDLs for all pollutants for which each waterbody is identified on Missouri's 1998 Section 303(d) List and to submit those TMDLs to EPA for review and approval or disapproval (or to provide data and information showing that a TMDL is unnecessary) in accordance with the milestones set forth in paragraph 5.B(3) below. Subject to paragraphs 5.B(2) and 5.B(4)(b) below, EPA shall establish TMDLs for each water and pollutant identified in Attachment A or identified as a New Water or EPA New Water, according to the milestones in paragraph 5.B(3) below, if EPA has not approved a TMDL established and submitted by Missouri for each such water and pollutant.

(2) In the event EPA establishes TMDLs under paragraph 5.B(1) of this Consent

Decree, EPA shall establish such TMDLs no later than twelve (12) months after the final date for Missouri to have established and submitted such TMDLs to EPA for approval/disapproval.

(3) Missouri will establish and submit to EPA TMDLs for the water segments identified in Attachment A for the pollutants for which the water segment is listed on the 1998 Section 303(d) List in accordance with the milestones in the following Table. The number of waterbodies identified for each year in the Table represents the cumulative number of waterbodies for which Missouri will establish and submit TMDLs to EPA between the Effective Date and December 31 of the respective year listed in the Table.

YEAR	CUMULATIVE NUMBER OF WATERBODIES
December 31, 2000 (for 1999-2000)	13
December 31, 2001	22
December 31, 2002	28
December 31, 2003	62
December 31, 2004	83
December 31, 2005	122
December 31, 2006	134
December 31, 2007	142
December 31, 2008	152
December 31, 2009	174

(4) (a) For purposes of measuring EPA's compliance with the milestones described in paragraph 5.B(2) and 5.B(3) immediately above, EPA may count:

- (i) Waterbodies for which TMDLs are established by Missouri and approved by EPA,
- (ii) Waterbodies for which TMDLs are established by EPA, and
- (iii) Waterbodies which EPA determines do not need TMDL(s) pursuant to paragraph 5.B(4)(b) below.

(b) In fulfilling its obligations under this Consent Decree, EPA is under no obligation to establish TMDLs for any waterbodies that EPA determines do not need TMDLs consistent with Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and its implementing regulations, including 40 C.F.R. § 130.7(b), or are removed from the Missouri Section 303(d) List or a future list consistent with the provisions of the Clean Water Act and EPA's implementing regulations.

(5) To the extent EPA establishes TMDLs in Missouri pursuant to this Consent Decree, and for the purposes of EPA deciding which TMDLs to establish pursuant to this Consent Decree, EPA is not bound by any prior Missouri TMDL selection decision or by TMDL work started but not completed by Missouri. In selecting waters for TMDL establishment, EPA shall consider, among other factors, whether the water has a "high" priority on the State's then applicable Section 303(d) List and any priorities previously established by Missouri.

C. EPA REPORTING

(1) On January 31st of each year, EPA shall submit to Plaintiffs and the Court a report detailing EPA's progress in meeting the commitments of this Consent Decree. The report shall include:

- a. identification of TMDLs proposed or established during the reporting period, including:
- (i) the waterbodies and associated pollutants for which EPA has established TMDLs in that year, if any;
 - (ii) the waterbodies and associated pollutants for which EPA has approved TMDLs submitted by Missouri in that year;
 - (iii) any other waterbodies and associated pollutants included on Missouri's 1998 Section 303(d) List or New Waters or EPA New Waters that are determined not to need TMDLs in that year pursuant to subparagraph 5.B(5)(b), including a description of the basis for such determination; and
 - (iv) if provided to EPA by Missouri, a list of Missouri waters for which EPA has previously approved or established TMDLs indicating whether the applicable water quality standards have been met.
- b. Review of EPA's compliance with any other terms of this Consent Decree during the reporting period.

VI. SECURING COURT APPROVAL

6. Plaintiffs agree to join in and support such legal proceedings as necessary to secure the Court's approval and entry of this Consent Decree.

VII. EFFECTIVE DATE

7. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the Court does not enter this Consent Decree, this Consent Decree shall not become effective.

VIII. TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

8. This Consent Decree shall terminate after fulfillment of the obligations in paragraph V of this Consent Decree. Upon termination of this Consent Decree, this case shall be dismissed with prejudice. The parties jointly shall file the appropriate notice with the Court so that the Clerk of the Court may close the file.

IX. FORCE MAJEURE

9. The parties recognize that the performance of this Consent Decree is subject to fiscal and procurement laws and regulations of the United States, which include but are not limited to the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et. seq. The possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Consent Decree. Such situations include, but are not limited to, a government shutdown such as occurred in 1995 and 1996 or catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be extended one day for each day

of the delay. EPA will provide Plaintiffs with notice as soon as is reasonably possible in the event that EPA invokes this term of the Consent Decree and will provide Plaintiffs with an explanation of EPA's basis for invoking this term. Plaintiffs may challenge the invocation of this term of the Consent Decree under the dispute resolution terms of paragraph 10 of this Consent Decree, Dispute Resolution, and EPA shall bear the burden of justifying its invocation of this term.

X. DISPUTE RESOLUTION

10. In the event of a disagreement between the parties concerning the interpretation of any aspect of this Consent Decree, the dissatisfied party shall provide the other party with written notice of the dispute and a request for negotiations. If the parties cannot reach an agreed resolution within thirty (30) days after receipt of the notice by the other party, then either party may petition the Court to resolve the dispute.

XI. EXTENSIONS AND MODIFICATIONS

11.A. Any dates set forth in this Consent Decree may be extended by written agreement of the parties and notice to court. To the extent the parties are not able to agree to an extension, EPA may seek a modification of this Consent Decree in accordance with the procedures specified below.

(i) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling more than thirty (30) days and provides notice to the

Plaintiffs at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such automatic extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, (ii) the date sought in such motion, or (iii) 90 days after the date sought to be modified. EPA may move the Court for a longer extension.

(2) If EPA files a motion requesting modification of a date or dates established by this Consent Decree totaling thirty (30) days or less, provides notice to the Plaintiffs at least fifteen (15) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by the Court on such motion, or (ii) the date sought in the modification.

(3) If EPA does not provide notice pursuant to Subparagraphs XI.11.A(1) or XI.11.A(2) above, EPA may move the Court for a stay of the date for which modification is sought. EPA shall give notice to the Plaintiffs as soon as reasonably possible of its intent to seek a modification and/or stay of the date sought to be modified.

(4) If the Court denies a motion by EPA to modify a date established by this Consent Decree, then the date for performance for which modification has been requested shall be such date as the Court may specify.

(5) Any motion to modify the schedule established in this Consent Decree shall be accompanied by a motion for expedited consideration. The parties to this Consent Decree shall join in any such motion for expedited consideration.

B. This Consent Decree may be modified by written agreement of the parties and approval of the Court. Nothing in this Consent Decree, or in the parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms upon a showing of good cause by any party. Good cause includes, but is not limited to, changes in the law or regulations implementing CWA Section 303 that affects EPA's commitments under this Consent Decree. In EPA's view, the failure of Congress to appropriate sufficient funds to meet EPA's obligations in this Consent Decree would constitute good cause for the modification of this Consent Decree. EPA shall have the burden to demonstrate good cause. The Plaintiffs reserve their rights to object to such request for modification.

XII. NOTICE

12. Any notice required or made with respect to this Consent Decree shall be in writing and shall be effective upon receipt. For any matter relating to this Consent Decree, the contact persons are:

For the Plaintiffs:

George Van Cleve
Van Cleve & Associates
1155 Connecticut Ave., NW
Suite 300
Washington, DC 20036

John M. Simpson, Esq.
4937 Wyoming Street
Kansas City, Missouri 64112

Associate General Counsel, Water Law Office
Office of General Counsel, 2355 A
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460

and

Upon written notice to the other parties, any party may designate its successor contact person for any matter relating to this Consent Decree.

XIII. SCOPE OF CIAL

13. Nothing in the terms of this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA pursuant to this Consent Decree, except for the purpose of determining EPA's compliance with the terms of this Consent Decree. Nothing in this Consent Decree alters or affects the standards for judicial review of final EPA action.

XIV. AGENCY DISCRETION

14. Except as expressly provided herein, or in any supplement to this Consent Decree, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act, 33 U.S.C. §§ 1251-1387, or by general principles of administrative law.

XV. REPRESENTATIVE AUTHORITY

15. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree. By signature below, Plaintiffs and EPA consent to entry of this Consent Decree.

XVI. SEVERABILITY

16. The various terms, paragraphs, and sections contained herein shall be deemed separable and severable. If any provision of this Consent Decree is deemed invalid or unenforceable, the balance of the Consent Decree shall remain in full force and effect.

XVII. MUTUAL DRAFTING

17. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

XVIII. COUNTERPARTS

18. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XIX. RELEASE BY PLAINTIFFS

19. Upon approval and entry of this Consent Decree by the Court and subject to paragraph 20 below, Plaintiffs hereby release, discharge, and covenant not to assert (by way of the commencement of an action, the joinder of the Administrator and/or EPA in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or may now or hereafter have, against the United States based upon matters which were asserted, or could have been asserted, by Plaintiffs

in the complaints filed in this case (Case Number 98-1195-CV-W and Consolidated Case 98-482-CV-W).

XX. PLAINTIFFS' RESERVATION OF RIGHTS

20. This Consent Decree does not waive or limit in any way Plaintiffs' rights except as expressly provided in this Consent Decree. Nothing in this Consent Decree shall be construed to waive or limit Plaintiffs' right to challenge or file suit on (1) Missouri's subsequent Section 303(d) Lists, whether such Section 303(d) List is prepared by Missouri or by the EPA; (2) any TMDLs, whether such TMDLs are established by Missouri or by the EPA; (3) the issuance, reissuance, modification, or revocation and reissuance of NPDES permits; (4) the consideration of nonpoint sources in the identification of WQLSs under Section 303(d) of the CWA; or (5) any violations of federal law with respect to the establishment of water quality standards in or for Missouri.

XXI. USE OF CONSENT DECREE

21. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

XXII. COMPLIANCE WITH OTHER LAWS

22. Nothing in this Consent Decree relieves EPA of the obligation to act in a manner consistent with applicable Federal, State or local law, including the notice and comment and other provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-599, 701-706, and applicable appropriations and law. No provisions of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

XXIII. MODIFICATION TO REGULATIONS

23. During the negotiations of this Consent Decree, EPA promulgated amendments to the Agency's TMDL regulations. 65 Fed. Reg. 43,586 (July 13, 2000). The amended regulations will not be effective until thirty (30) days after the date Congress allows EPA to implement the amended regulations. In the event these amendments become effective or there are other future regulatory changes that any party believes will affect compliance with this Consent Decree, the parties will attempt to agree on appropriate changes to this Consent Decree. If no agreement is possible, the provisions of Paragraphs 10 or 11 of this Consent Decree, as appropriate, shall apply.

XXIV. APPLICABLE LAW

24. This Consent Decree shall be governed and construed under the laws of the United States.

XXV. THIRD-PARTY BENEFICIARIES

25. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

XXVII. COSTS

26. EPA agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs accrued as of the Effective Date of this Consent Decree on the claims asserted in their complaints. The parties will attempt to reach agreement as to the appropriate amount of the recovery. If they are unable to do so, Plaintiffs may file an application with the Court for the recovery of reasonable attorney's fees within ninety (90) days of the Effective Date, and EPA shall respond to it within sixty (60) days. These deadlines may be changed as mutually agreed by the parties.

For the United States of America:

LOIS J. SCHIFFER
Assistant Attorney General

Dated: August 18, 2000

By: Eileen McDonough

EILEEN MCDONOUGH
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986

Washington, DC 20026

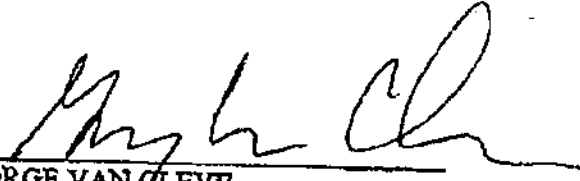
Of Counsel for the Defendants
and the United States of America:

Karyn Wendelowski
Office of General Counsel (2355A)
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Washington, DC 20460

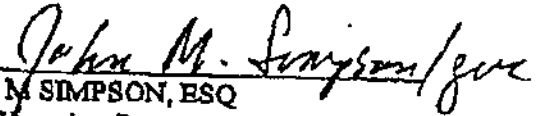
Martha R. Steincamp
Office of Regional Counsel
U.S. Environmental Protection Agency
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FOR PLAINTIFFS:

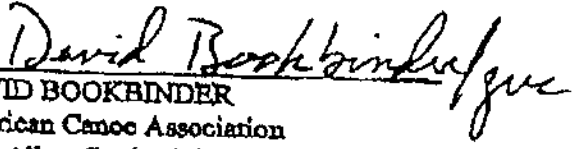
Dated: August 17, 2000

By: 
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Dated August 17, 2000

By: 
JOHN M. SIMPSON, ESQ.
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Dated August 17, 2000

By: 
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ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. The foregoing Consent Decree is hereby APPROVED.

SIGNED AND ENTERED this _____ day of _____, 2000.

Hon. SCOTT O. WRIGHT
Judge, U.S. District Court
Western District of Missouri

ATTACHMENT A

WBID Waterbody Name

1529	L. Beaver Creek
1746	Big Bottom Creek
2916	Big Creek
1224	Big Otter Creek
2074	Big River
2080	Big River
2755	W. Fk. Black River
0811	E. Brush Creek
1370	Brush Creek
1592	Brushy Creek
0859	Brushy Fork
3269	Buffalo Creek
3273	Buffalo Creek
3118	Buffalo Ditch
0709	Bynum Creek
0103	Cannon Re-reg Pool
Uncl	Cave Spring Branch
0737	Cedar Creek
3203	Center Creek
3168	Chat Creek
3238	Clear Creek
3239	Clear Creek
0690	Dark Creek
0912	Davis Creek
0542	Dog Creek
1145	Dry Auglaize Creek
2604	Eleven Point River
3246	Elk River
2168	Flat River Creek
2860	Goose Creek
0883	Gabriel Creek
1007	Hinkson Creek
1251	Honey Creek
2582	Howell Creek
3256	Indian Creek
3262	M. Indian Creek
3263	M. Indian Creek
3260	N. Indian Creek
3259	S. Indian Creek

2681 Jacks Fork River
2347 James River
2362 James River
2365 James River
1016 Kelley Branch
1438 Little Lindley Creek
0427 E. Fk. Little Blue R.
0535 Long Creek
2814 Main Ditch
0742 Manacle Creek
2787 McKenzie Creek
1234 Monegaw Creek
0942 N. Moreau Creek
1300 Mound Branch
0855 Muddy Creek
1305 Mulberry Creek
1031 Osage River
3268 Patterson Creek
2373 Pearson Creek
2614 Pincy Creek
1714 Rock Creek
1014 Rocky Fork
0278 Rush Cr.
1381 L. Sac River
2859 Saline Creek
2190 Saline Creek
0091 Salt River
1319 Second Nicholson Creek
2170 Shaw Branch
2120 Shibboleth Creek
3230 Shoal Creek
0400 W. Fk. Sni-a-Bar Cr.
2835 St. Francis River
1361 Stockton Branch
0959 Straight Fork
3250 B. Sugar Creek
3249 L. Sugar Creek
0686 Sugar Creek
1282 E. Fk. Tebo Creek
1284 M. Fk. Tebo Creek
1288 M. Fk. Tebo Creek
1292 W. Fk. Tebo Creek
2850 Trace Creek
1211 Trib. Barker's Creek
1225 Trib. Big Otter Creek

2128 Trib. Pond Creek
3217 Turkey Creek
3216 Turkey Creek
3282 Turkey Creek
2864 Village Creek
1505 Whetstone Creek
2375 Wilson Creek
7119 Cameron Lower Lake
7120 Cameron Lake #1
7121 Cameron Lake #2
7237 Fellows Lake
7124 Hamilton Lake
7190 Higginsville S. Lake
7022 LaBelle Lake #1
7023 LaBelle Lake #2
7205 Lake of the Ozarks
7314 Lake Taneycomo
7356 Lamar Lake
7033 Mark Twain Lake
7236 McDaniel Lake
7031 Monrocity Route J Lake
7187 Spring Fork Lake
7077 Smithville Lake
7205 Truman Lake - S. Grand Arm
7032 Vandalia Lake
1250 Big Creek
0449 W. Fk. Big Cr.
0436 Big Muddy Cr.
0653 Blackbird Cr.
0921 S. Fk. Blackwater
1336 Clear Cr.
0372 E. Fk. Crooked Cr.
1325 L. Drywood Cr.
0189 Elkhorn Cr.
0056 N. Fabius R.
0865 Flat Cr.
0457 E. Fk. Grand R.
0468 M. Fk. Grand R.
0502 Grindstone Cr.
0337 Honey Cr.
0554 Honey Cr.
0212 Indian Camp Cr.
0606 Locust Cr.
0612 W. Fk. Locust Cr.
0339 Long Branch

0875 Lake Cr.
3106 Lat.#2 Main Ditch
0508 Marrowbone Cr.
0619 E. Fk. Medicine Cr.
0623 L. Medicine Cr.
1299 Miami Cr.
2124 Mill Creek
all Mississippi R.
all Missouri R.
0345 White Cloud Cr.
0674 Mussel Fork
1175 W. Fk. Niangua R.
0081 North River
3041 Old Ch. Little R.
1444 Piper Cr.
0327 3rd Fk. Platte R.
0121 M. Fk. Salt R.
3134 Spillway Ditch
0657 Spring Cr.
1870 Spring Cr.
3188 N. Fk. Spring R.
0710 Stinson Cr.
0248 L. Tarkio Cr.
0073 Troublesome Cr.
1339 Walnut Cr.
0050 S. Wyaconda R.
7171 Long Branch Lake
7009 Wyaconda Lake
0417 Blue River
0418 Blue River
0419 Blue River
0421 Blue River
0037 Fox River
0046 Wyaconda River
0063 M. Fabius River
7255 Creve Coeur Lake
7054 Lake St. Louis
7211 Pleasant Hill Lake
7207 Truman Lake
0640 Chariton River
0856 L. Muddy Creek
unknown N. Moreau Creek
3490 Tyson's Branch
3652 Little Osage River
1308 Marmaton River

ATTACHMENT B

<u>WATER</u>	<u>COUNTY</u>	<u>LENGTH</u>	<u>POLLUTANT</u>
Bear Creek	Adair	7 mls to Rt. KK	FC, SED, Unk(WWTF)
Hickory Creek	Daviess	5.5 mls to mouth	AW, SED
Hickory Creek	Grundy	7.5 mls to mouth	AW, SED
Raccoon Creek	Grundy	5 mls to mouth	AW, SED
Indian Creek	Iron	4 mls	MTL
Little Blue River	Jackson	33 mls to mouth	Unk(PS/NPS)
E. Honey Creek	Mercer	8 mls to RT. JJ	AW, SED
W. Honey Creek	Mercer	11 mls to Rt. JJ	AW, SED
W. Medicine Creek	Mercer	35 mls to mouth	ATZ, AW, SED
Muddy Creek	Mercer	18 mls to Grundy Co.	AW, FC, SED
Hess-Heaths Creek	Pettis-Cooper	22 mls to mouth	AW, SED
Long Branch	Pettis-Johnson	6 mls to mouth	Unk
Sewer Branch (Pearl River)	Pettis	4 mls to mouth	FC, Unk(WWTF)
Little Locust Creek	Putnam	6 mls to county line	AW, SED
W. Locust Creek	Putnam	8 mls to mouth	AW, SED
Sandy Creek	Putnam	6 mls to mouth	Unk(AML), SED, AW
Shoal Creek	Putnam	20 mls to mouth	Unk(AML), ATZ, AW, FC, SED
Willow Branch	Putnam	2.5 mls to mouth	AW, SED
E. Fork Long Branch	Sullivan-Linn	7 mls to 61N 20W S35	AW, SED
Bull Creek	Taney	6 mls	Unk(SGE), SED
Beaver Creek	Taney	1 mile	Unk(SGE), SED
Roark Creek	Taney	3.5 mls to mouth	Unk(PS/NPS)
Swan Creek	Taney	3 mls	Unk(SGE), SED
McCarty Creek	Vernon-Barton	13 mls to 35N 29W S28	AW, SED
Thompson River		Entire MO length	ATZ, AW, SED
E. Fork Locust Creek	Sullivan-Linn		Unk(WWTFs)

Codes - Pollutants:

ATZ - Atrazine
 AW - Animal wastes
 FC - Fecal coliform
 MTL - Metals
 SED - Sediment
 Unk - Unknown pollutant

Codes - Sources

AML - Abandoned mine land
 PS/NPS - Multiple sources
 SGE - Sand/gravel extraction
 WWTF - Wastewater treatment